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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Letter dated 27 June 1997 from the Permanent Mission of Singapore to the United Nations Office at Geneva addressed to the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

1. I have the honour to refer to your report, dated 23 December 1996 (E/CN.4/1997/60/Add.1), submitted pursuant to Commission on Human Rights resolution 1996/74, to the fifty-third session of the Commission.

2. In paragraph 438 of the report, you had stated that you "[wished] to reiterate [your] call on the Government of Singapore to change its Drug Act so as to bring it into line with international standards. [You considered] that the Misuse of Drug Act, which partially shifts the burden of proof to the accused, does not provide sufficient guarantees for the presumption of innocence and may lead to violations of the right to life when the crime of drug trafficking carries a mandatory death sentence. [You also wished] to remind the Government of paragraph 6 of the safeguards guaranteeing protection of the rights of those facing the death penalty."

3. The above statements are without basis. Firstly, you have yourself admitted that there is no international consensus on the abolition of capital punishment. In paragraph 105 of your interim report on extrajudicial, summary or arbitrary executions, dated 7 October 1996 (A/51/457), submitted to the General Assembly at its fifty-first session, you acknowledged that capital punishment is not yet prohibited under international law. Secondly, your observation that the Singapore Misuse of Drug Act (MDA) is not in line with international standards is also incorrect. Article 6 (2) of the International

Covenant on Civil and Political Rights states that in countries which have not abolished the death penalty, sentence of death may be imposed for the most serious crimes in accordance with the law in force at the time of the commission of the crime and that the sentence can be carried out pursuant to a final judgement rendered by a competent court. Drug trafficking is considered by the international community as a most serious crime. Its effects in terms of human suffering and social costs on society as a whole are horrendous.

4. Being a major international transit centre in Southeast Asia, and given its close proximity to the Golden Triangle, Singapore is ever vigilant against local and foreign drug traffickers using our country for their illegal drug trade. The harmful effects of certain drugs on the general population are well known. The tough anti-drug laws have worked well in Singapore's context to deter and punish drug traffickers. Singapore considers the MDA to be a necessary legislation to help us keep our country drug-free. Singapore also considers certain drug offences as stipulated in the MDA as most serious crimes and thus they attract capital punishment. These provisions in the MDA are therefore in line with article 6 (2) of the International Covenant.

5. Thirdly, it is also not factually correct to state that the MDA does not provide sufficient guarantees for the presumption of innocence for person(s) charged with trafficking in drugs. There is in fact an inherent safeguard in section 17 of the MDA. Under this section, it must first be *proved* that the accused had in his possession a controlled drug in excess of the quantity specified under the section. Only then does a *rebuttable* presumption of trafficking in drugs arise. In order to invoke the presumption under section 17 of the Act, it must also be *shown* that the accused knew the nature of the particular controlled drug, i.e., whether it is diamorphine, cannabis, cocaine or opium, etc. The presumption under section 17 can be rebutted by the accused if he can show that the drug in his possession was solely for his personal consumption.

6. Let me underscore that the Singapore Government is deeply conscious of and attaches the highest importance to the rights of every individual to life, liberty and security of person. This is a right enshrined in our Constitution. Article 9 (1) of the Constitution of the Republic of Singapore states that "no person shall be deprived of his life or personal liberty *save in accordance with law*" (emphasis added). I enclose at Annex A a full summary of Singapore's criminal justice system in relation to capital cases.

7. It can therefore be seen from Annex A that every person convicted by a court of law in Singapore is given full recourse to due legal process. This includes a fair and open trial, the right to legal assistance at all stages, the right to appeal and the right to seek pardon or commutation of sentence. In addition, every person convicted by a court of law in Singapore has a right of appeal. The procedure for the lodging of appeals, and particularly the time limit for the filing of notices of appeal, are carefully explained to every prisoner by the Prison authorities immediately upon admission to prison. As a matter of practice, every prisoner who has been sentenced to death is asked by the Prison authorities to file a Notice of Appeal. Moreover, under Singapore law, the death penalty is not imposed on persons such as pregnant women, those under the age of 18 years at the time of commission of the offence, or insane persons.

8. By virtue of section 8 (2) of the Republic of Singapore Independence Act (RSIA), in every case when an offender is sentenced to death, a report of the trial court and the appellate court (where the sentence of death had been confirmed by the appellate court) together with the Opinion of the Attorney-General is forwarded to the Cabinet of the Government of the Republic of Singapore so that the Cabinet may advise the President of Singapore on the exercise of the power conferred on him by section 8 (1) of the RSIA, to grant pardon, reprieve or respite of the execution of any sentence pronounced. There is thus provision in the law of Singapore for mandatory review by the Executive of every death sentence imposed by the courts, regardless of whether an appeal has been filed or proceeded with.

9. As can be seen from the preceding paragraphs, the Singapore Government has taken all the necessary steps to ensure that everyone who is convicted by a court of law in Singapore, including those sentenced to death, is given full recourse to due legal process. Thus, Singapore has met, in spirit and in letter, all the stipulations, and not just paragraph 6, of the "Safeguards guaranteeing protection of the rights of those facing the death penalty" as established by the Economic and Social Council. [Resolution 1984/50, annex]

Yours sincerely,

(Signed) SEE CHAK MUN
Ambassador
Permanent Representative

Annex A

The Criminal Justice System of Singapore in Relation to Capital Cases

1. Procedure for trials of capital cases in Singapore

The procedure applicable to trials of capital offences in Singapore and the evidence that may be adduced therein are provided for in the Criminal Procedure Code (Cap. 68) and the Evidence Act (Cap. 97). The procedure in such trials is as follows:

1.1 All persons accused of any offence are entitled to engage counsel of their choice to represent them. In capital cases where an accused person is unable to afford to engage a counsel to represent him, the State will bear the expense of engaging two counsels to perform this task until the entire proceedings, up to the appeal stage, are concluded.

1.2 Before an accused person charged for a capital offence is tried for the offence, the law requires that a Preliminary Inquiry be held. The purpose of this Inquiry is to ensure that there is at least a prima facie case against the accused person before even his trial can be scheduled. This Preliminary Inquiry is held before a Magistrate who will decide, after evidence is adduced before him, whether a prima facie case supporting the charge for the capital offence has been established.

1.3 In a Preliminary Inquiry the burden of establishing a prima facie case to the satisfaction of the presiding Magistrate is placed on the Prosecution. In doing so only properly admissible evidence can be adduced through witnesses whom the accused person, through his counsel, is entitled to cross-examine.

1.4 Only where the Magistrate is satisfied, at the conclusion of the Preliminary Inquiry, on the evidence that has been admitted before him, that a prima facie case to support a charge for a capital offence has been established, will he then order the accused person to be committed to the High Court for the trial of the said charge.

1.5 Where the Magistrate decides, at the conclusion of a Preliminary Inquiry, that a prima facie case against the accused person has not been established, he is then bound to discharge the accused person, who will be allowed to go free.

1.6 Where, however, the Magistrate, at the conclusion of a Preliminary Inquiry, has committed the accused person to the High Court for trial, the Registrar of the High Court will then set down dates for the trial. This trial will be heard by a High Court Judge.

1.7 At the trial in the High Court, the burden still remains on the Prosecution to establish a prima facie case on the charge against the accused person before the Trial Judge can call on the accused to give his defence thereto.

1.8 To establish a prima facie case against the accused person to warrant the Trial Judge to call on him for his defence, the Prosecution has to call afresh all relevant witnesses to give oral testimony or, where agreed to by Defence Counsel, the submission of the written depositions of all or any of such witnesses, all of whom the Defence Counsel will be entitled to cross-examine.

1.9 After the Prosecution has tendered its evidence as aforesaid, and following submissions on the law and the sufficiency of the evidence adduced by the Defence Counsel and the Prosecuting Counsel, the Trial Judge will make his decision as to whether a prima facie case has been established against the accused person to warrant his defence being heard. Where he decides that the Prosecution has failed to do so, he will then order the discharge and acquittal of the accused person, and the trial is concluded.

1.10 Where, however, the Trial Judge is satisfied that a prima facie case has been established against the accused person which warrants his defence being heard, he will then call on him to state his defence to the charge. He will also inform the accused person that he has the option of either deciding to give his defence under oath from the witness-stand, in which case he will then be subject to cross-examination by the Prosecuting Counsel and to questions by the Judge himself, or remaining silent, with the caution that if he decides on that course all proper inferences to be drawn from his remaining silent may then be made. The accused person is also informed that whatever course he opts to adopt, he will still be entitled to call any witnesses to testify on his behalf.

1.11 In his defence, the accused person need only raise a reasonable doubt against the case of the Prosecution established earlier in order for him to gain his discharge and acquittal on the charge for which he was tried.

1.12 At this trial the accused person is at liberty to call all evidence, in addition to his own testimony, if he opts to testify on oath, as may be necessary and relevant on his behalf to cast a reasonable doubt on the Prosecution's case.

1.13 At the close of the defence both the Prosecution and the Defence are entitled to put forward submissions on both the law and the sufficiency of the evidence, either in support of the Prosecution's or the Defence's case, as the case may be, adduced during the trial.

1.14 Following closing submissions, as aforesaid, the Trial Judge will, after deliberation on the evidence and the submissions heard, make a decision on the guilt or otherwise of the accused person.

1.15 In cases of murder, drug trafficking in drugs of and above certain prescribed amounts, the discharging of firearms in the course of committing an offence, etc., the punishment of death is mandatory except where the person convicted of any such offences was, at the time of the commission of the offence, under the age of 18 years, in which case, the Trial Court shall sentence him to be detained at the President's pleasure.

2. Appeals and Petitions for Clemency

2.1 A person convicted of any offence by the High Court has the right of appeal to the Court of Appeal against the decision of the High Court in convicting him or in deciding on the sentence imposed on him or against both the conviction and sentence. He may dispute the decision on questions of law or on the facts or of mixed law and fact.

2.2 A person convicted of any offence by the High Court may apply to adduce additional evidence for the purposes of the appeal in which case the Court of Appeal may, if it thinks such evidence is necessary, either take such evidence itself or direct it to be taken by the Trial Court.

2.3 Where the Trial Court is directed to take additional evidence in relation to an appeal it shall certify such evidence that is taken, with a statement of its opinion on the case considered with regard to the additional evidence, to the Court of Appeal, whereupon the Court of Appeal shall then proceed to dispose the appeal.

2.4 Should an appeal by a convicted prisoner be dismissed by the Court of Appeal he will have no other recourse to any other court to pursue the matter further. However, a final recourse open to him is to Petition for Clemency to the President for inter alia a pardon or the commutation of the sentence imposed to a lesser sentence.